

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No. 09-50779

Dennis E. Hecker,

Debtor.

Randall L. Seaver, Trustee,

ADV No. 10-5027

Plaintiff,

AMENDED COMPLAINT

vs.

New Buffalo Auto Sales, LLC,
a Minnesota limited liability company,
f/k/a New Buffalo Chrysler, LLC,
Maurice J. Wagener, and Palladium Holdings
LLC,

Defendants.

Randall L. Seaver, Trustee of the Bankruptcy Estate of Dennis E. Hecker (“**Debtor**”), for his Complaint against New Buffalo Auto Sales, LLC, a Minnesota limited liability company, f/k/a New Buffalo Chrysler, LLC (“**NBLLC**”), Maurice J. Wagener (“**Wagener**”) and Palladium Holdings, LLC (“**Palladium**”) (collectively “**Defendants**”), states and alleges as follows:

1. Randall L. Seaver is the duly appointed Chapter 7 Trustee of the bankruptcy estate of the Debtor.

2. This bankruptcy case was commenced on June 4, 2009 by the filing of a voluntary Chapter 7 petition.

3. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).

4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334. This case arises under 11 U.S.C. §§547, 549, 550 and 551.

5. Defendant NBLLC is believed to be a Ford dealer in Buffalo, MN owned or controlled by Defendant Wagener.

6. Defendant Palladium is a Minnesota limited liability company.

7. Prior to May 7, 2009, Defendants NBLLC and Wagener, apparently, had a claim against the Debtor in an amount approximating \$324,938.72.

8. In January, 2009, Defendants NBLLC and Wagener commenced an action in Hennepin County, MN against the Debtor to collect on the debt (Hennepin County Court File No. 27-CV-09-2692).

9. On or about May 7, 2010, a judgment in the amount of \$324,938.72 was entered and docketed against the Debtor and in favor of Defendants NBLLC and Wagener (the **“Judgment”**).

10. At the time of filing, Debtor owned real estate located at 1615 Northridge Drive, Medina, MN 55391 and legally described as follows:

Lot 15, Block 3, North Ridge Farm, Hennepin County, Minnesota
(**“North Ridge”**).

11. The judgment of NBLLC and Wagener was obtained within 90 days prior to the commencement of this bankruptcy case.

12. North Ridge was a non-exempt asset of the Debtor.

13. U.S. Bank held the first mortgage on North Ridge. It obtained stay relief, foreclosed the mortgage and purchased North Ridge at the sheriff's sale for \$213,263.00.

14. The second and third mortgage holders, whose original principal balances totaled approximately \$900,000.00, did not redeem.

15. Upon information and belief, North Ridge has a value of in excess of \$800,000.00. The county tax value for North Ridge is \$1,838,000.00.

16. On or about July 22, 2010, Defendants NBLLC and Wagener through use of the Judgment, redeemed from the U.S. Bank foreclosure by tendering less than \$225,000.00 to the Hennepin County Sheriff (the "**Redemption**").

17. That same day, Defendants NBLLC and Wagener sold their interest in North Ridge to Palladium, which had financed U.S. Bank redemption.

18. As a result of the Judgment and subsequent Redemption, Defendants now hold an interest in North Ridge.

**COUNT I: AVOIDANCE OF JUDGMENT LIEN
AS A PREFERENTIAL TRANSFER (NBLLC AND WAGENER)**

19. Prior to commencement of this Chapter 7 case, Defendants NBLLC and Wagener obtained the Judgment which was a "transfer" of an interest of the Debtor in property.

20. At the time of the transfer, Defendants NBLLC and Wagener were creditors of the Debtor.

21. The transfer was for or on account of an antecedent debt owed by the Debtor to Defendants NBLLC and Wagener.

22. The Debtor was insolvent at the time of the transfer and is deemed to have been insolvent.

23. The transfer will enable Defendants NBLLC and Wagener to recover more than they would receive as creditors in this Chapter 7 case by the means of the Redemption.

24. None of the exceptions to the Plaintiff's avoidance powers set forth in 11 U.S.C. §547(c) applies to the transfer.

25. Pursuant to 11 U.S.C. §547(b), the transfer is avoidable.

26. Pursuant to 11 U.S.C. §§550 and 551, Plaintiff may avoid the transfer and preserve the Judgment and the resulting Redemption for the benefit of the bankruptcy estate.

27. Alternatively, Plaintiff is entitled to a judgment against Defendants NBLC and Wagener in the amount of the value of the transfer.

COUNT II: AVOIDANCE UNDER 11 U.S.C. §549

28. The Trustee realleges the foregoing paragraphs of this Complaint in their entirety.

29. In February, 2010, the trustee signed and had delivered to Attorney William Skolnick a deed purporting to transfer the estate's interest in the North Ridge property to Ralph Thomas ("**Trustee Deed**").

30. The Trustee's Deed to Ralph Thomas was never registered. A copy of the certificate of title as it existed on July 14, 2010, is attached hereto as Exhibit A.

31. Pursuant to Minn. Stat. §508.47(1), the Trustee's Deed did not act as a conveyance, but only a contract between the parties. The act of registration was the operative act necessary to convey North Ridge. No such registration ever took place, and at all relevant times, the certificate of title remained in the name of Dennis E. Hecker.

32. On April 20, 2010, the Judgment was memorialized upon the certificate as Doc. No. 4747121. That memorialization acted as a conveyance of an interest in the North Ridge property. The conveyance of an interest in the North Ridge property effected by the April 20, 2010 Judgment memorialization is a transfer avoidable by the trustee pursuant to 11 U.S.C. §549 and recoverable under 11 U.S.C. §550.

33. Because the deed to Ralph Thomas was not registered there was no conveyance of the North Ridge property to Ralph Thomas. Because the deed was not registered, the Defendants were able to memorialize the Judgment on April 20, 2010. Had the Trustee's Deed been registered prior to that time and the conveyance this made to Ralph Thomas, the Defendants would have been unable to memorialize the Judgment on the certificate.

**COUNT III: AVOIDANCE OF JUDGMENT LIEN
(PALLADIUM)**

34. The Trustee realleges the foregoing paragraphs of this Complaint in their entirety.

35. Palladium is either the immediate or mediate transferee of the Judgment or, alternatively, is the entity for whose benefit such transfer was made.

36. Palladium, at all times material hereto, was aware of the Debtor's bankruptcy case and the potential avoidability of transfers.

37. Pursuant to 11 U.S.C. §§547, 549, 550 and 551, Plaintiff may avoid the transfer and preserve the Judgment and the resulting Redemption for the benefit of the bankruptcy estate from Palladium.

38. Alternatively, Plaintiff is entitled to a judgment against Defendant Palladium in the amount of the value of the transfer.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment:

1. Avoiding and recovering the Judgment and transfers effected thereby, pursuant to 11 U.S.C. §§547, 549 and 550 and automatically preserving the Judgment and transfers effected thereby, pursuant to 11 U.S.C. §551.

2. Holding that all rights in the real property legally described as:

Lot 15, Block 3, North Ridge Farm, Hennepin County, Minnesota

obtained by the Defendants, as a result of the Judgment and Redemption, are property of the estate.

3. Entering a monetary judgment against Defendants in the amount of the value of the transfer.

4. Awarding Plaintiff his costs and disbursements in this action, and such other or further relief as the Court deems just and equitable.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

/e/ Matthew R. Burton

Dated: August 9, 2010

By: _____

Matthew R. Burton, #210018

100 South Fifth Street

Suite 2500

Minneapolis, Minnesota 55402-1234

(612) 332-1030

Attorneys for Randall L. Seaver, Trustee

425325.2

Certificate of Title

Certificate Number: **804148**

Transfer From Certificate Number: **796360**

Originally registered April 24, 1987 Volume:2345, Certificate No: 698945, District Court No: 19036

State of Minnesota } s.s. Registration
County of Hennepin }

This is to certify that

Dennis E. Hecker, whose address is 1615 Northridge Drive, Medina, Minnesota

is now the owner of an estate in fee simple

In the following described land situated in the County of Hennepin and State of Minnesota:

Lot 15, Block 3, North Ridge Farm.

Subject to drainage and utility easements as shown on plat and as contained in the dedication clause thereof;

Subject to and together with a Declaration of Covenants, Conditions, Restrictions, Charges and Liens as contained in Document No. 5004854, office of County Recorder;

Subject to the interests shown by the following memorials and to the following rights or encumbrances set forth in Minnesota statutes chapter 508, namely:

1. Liens, claims, or rights arising under the laws of the Constitution of the United States, which the statutes of this state cannot require to appear of record;
2. Any real property tax or special assessment for which a sale of the land has not been had at the date of the certificate of title;
3. Any lease for a period not exceeding three years, when there is actual occupation of the premises under the lease;
4. All rights in public highways upon the land;
5. Such right of appeal or right to appear and contest the application as is allowed by law;
6. The rights of any person in possession under deed or contract for deed from the owner of the certificate of title;
7. Any outstanding mechanics lien rights which may exist under sections 514.01 to 514.17.

Memorials				
Document Number	Document Type	Date of Registration Month Day, Year Time	Amount (\$)	Running in Favor Of
2282725	Mortgage	Jul 24, 1992 9:00 AM	\$400,000.00	FBS Mortgage Corporation (a NV corp) Minneapolis, MN
2311591	Assignment of Mortgage	Nov 2, 1992 12:00 PM		First Wisconsin Trust Company, as Trustee under the Pooling & Servicing Agreement dated September 1, 1992 Series 1992-D 815 E. Michigan Milwaukee, WI Assigns document no(s). 2282725.0
2410243	Mortgage	Aug 13, 1993 9:00 AM	\$730,000.00	Norwest Bank Minnesota, National Association St. Paul, MN
2474587	Power of Attorney	Feb 1, 1994 2:00 PM		Jean G. Schuldt from Dennis E. Hecker
2474588	Mortgage	Feb 1, 1994 2:00 PM	\$602,000.00	Norwest Mortgage, Inc. P.O. Box 5137 Des Moines, IA
2480237	Satisfaction of Mortgage	Feb 14, 1994 12:00 PM		Walden Leasing, Inc. Satisfies document no(s). 2410243.0
2536550	Mortgage	Jul 28, 1994 11:00 AM	\$250,000.00	Firststar Bank of Minnesota, N.A. Arden Hills, MN
2536551	Certificate and Request for Notice	Jul 28, 1994 11:00 AM		Firststar Bank of Minnesota, N.A. requests notice re-foreclosure (See Inst)
2864882	Assignment of Mortgage	Nov 25, 1997 4:00 PM		Residential Funding Corporation Minneapolis, MN Assigns document no(s). 2474588.0
3205977	Satisfaction of Mortgage	Sep 21, 1999 4:00 PM		Satisfies document no(s). 2536550.0

Memorials				
Document Number	Document Type	Date of Registration Month Day, Year Time	Amount (\$)	Running in Favor Of
3223971	Mortgage	Nov 10, 1999 11:00 AM	\$250,000.00	Firstar Bank U.S.A., N.A., 1529 White Oak Drive, City of Waukegan, State of Illinois
3473642	Mortgage	Dec 17, 2001 1:00 PM	\$650,000.00	Mortgage Electronic Registration Systems, Inc., (a DE corp), P.O. Box 2026, City of Flint, State of Michigan Made by Dennis E. Hecker & Tamitha D. Hecker, hus & wf
3473643	Mortgage	Dec 17, 2001 1:00 PM	\$250,000.00	GMAC Mortgage Corporation, (a PA corp), 100 Witmer Road, City of Horsham, State of Pennsylvania Mortgage Electronic Registration Systems, Inc., P.O. Box 2026, City of Flint, State of Michigan
3491279	Certificate of Release of Mortgage	Jan 25, 2002 11:00 AM		Releases document no(s). 2282725.0
3503372	Satisfaction of Mortgage	Feb 15, 2002 4:00 PM		Satisfies document no(s). 2474588.0
4161898	Assignment of Mortgage	Sep 14, 2005 4:00 PM		U.S. Bank National Association c/o Briggs and Morgan, P.A. 2200 IDS Center, City of Minneapolis, State of Minnesota Assigns document no(s). 3223971.0
4161899	Amendment of Mortgage	Sep 14, 2005 4:00 PM		U.S. Bank National Association c/o Briggs and Morgan, P.A. 2200 IDS Center, Minneapolis, MN Amending Doc No 3223971.
4383786	Amendment	May 7, 2007 9:00 AM		Amends Doc No 1651379
4638917	Mechanic's Lien	Apr 30, 2009 12:00 PM	\$6,724.45	Condor Fireplace and Stone Company, (a MN corp) Date of Last Item: Mar 11, 2009
4704494	Notice of Pendency and Power of Attorney to Foreclose	Nov 17, 2009 11:06 AM		The Public Stein & Moore, P.A. Re: Mtge Doc No 3223971
4721940	Sheriff's Certificate	Jan 19, 2010 10:59 AM		U.S. Bank National Association Date of sale Jan. 19, 2010 Re: Mtge. Doc No. 3223971 Redemption Period: Six months from the date of said sale.
4747121	Judgment	Apr 20, 2010 3:34 PM	\$324,938.72	New Buffalo Auto Sales, LLC and Maurice J Wagener On int of Monticello Motors LLC and Dennis E Hecker
4747638	Judgment	Apr 22, 2010 11:00 AM		Dennis Hecker
4765099	Notice of Intention to Redeem	Jun 23, 2010 4:00 PM		The Public. Given by New Buffalo Auto Sales, LLC, (a MN llc) Regarding Sheriff's Certificate document no(s) 4721940
4768580	Assignment	Jul 8, 2010 9:31 AM		Palladium Holdings, LLC 301 Clifton Ave Minneapolis, MN Assigns Judgment document no(s) 4747638
4768581	Notice of Intention to Redeem	Jul 8, 2010 9:31 AM		The Public. Given by Palladium Holdings, LLC Regarding Sheriff's Certificate document no(s) 4721940
4773196	Bankruptcy	Jul 23, 2010 3:21 PM		Regarding bankruptcy of Dennis E. Hecker
4773478	Notice of Lis Pendens	Jul 26, 2010 2:33 PM		Randall L Seaver, Trustee Leonard, O'Brien Spencer, Gale & Sayre, Ltd. To determine Plaintiff's interest in the real estate desc above.
4774099	Affidavit Regarding Foreclosure	Jul 28, 2010 10:45 AM		Regarding Foreclosure Sale document no(s) 4747121
4774100	Certificate of Redemption	Jul 28, 2010 10:45 AM	\$218,025.30	New Buffalo Auto Sales, LLC Date of Redemption: July 22, 2010 Regarding Foreclosure Sale document no(s) 4721940
4774101	Quit Claim Deed	Jul 28, 2010 10:45 AM		Palladium Holding LLC a Minnesota limited liability company 301 Clifton Ave, Minneapolis MN from New Buffalo Auto Sales LLC (a MN llc)
4774102	Mortgage	Jul 28, 2010 10:45 AM	\$320,000.00	New Buffalo Auto Sales, LLC, (a MN llc) c/o Zappia & LeVahn, Ltd 941 Hillwind Rd, Minneapolis MN Made by Palladium Holdings, LLC (a MN llc) No legal given on Mortgage

Memorials

Document Number	Document Type	Date of Registration Month Day, Year Time	Amount (\$)	Running in Favor Of
4774765	Certificate of Redemption	Jul 29, 2010 4:09 PM	\$561,500.00	Palladium Holdings, LLC, (a MN llc) Date of Redemption: July 29, 2010 Regarding Foreclosure Sale document no(s) 4721940
4774766	Affidavit Regarding Foreclosure	Jul 29, 2010 4:09 PM		The Public Regarding Foreclosure Sale document no(s) 4721940

Indexes Verified through 7/30/2010



IN WITNESS WHEREOF, I have hereunto subscribed my name
and affixed the seal of my office this 1st day of February, 1994.

R. Dan Carlson

Registrar of Titles,

In and for the County of Hennepin and State of Minnesota.